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(erroneously sued as The Bank of New York)

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KENNEDY NOTE, LLC, an Oregon limited
liability company,

PLAINTIFF,

v.

THE BANK OF NEW YORK, As Trustee for
Structured Asset Securities Corporation
Mortgage Pass-through Certificates 2002-23XS,
its successors and/or assigns; and
MEDALLION INDUSTRIES, INC., an Oregon
corporation,

DEFENDANT.

Case No. 3:19-cv-01846-YY

**THE BANK OF NEW YORK'S
ANSWER AND AFFIRMATIVE
DEFENSES**

For its answer to Plaintiff Kennedy Note, LLC's complaint, Defendant The Bank of New York Mellon, erroneously sued as Bank of New York, as Trustee for Structured Asset Securities Corporation Mortgage Pass-through Certificates 2002-23XS ("Bank of New York Mellon" or "Defendant") answers Plaintiff's Complaint as follows:

1. In answering paragraph 1 of the Complaint, Defendant admits that the Oregon Secretary of State website reflects that Kennedy Note, LLC is registered with the Oregon

Secretary of State as an Oregon Limited Liability Company and lists its mailing address as 14300 SW McKinley Drive, Sherwood, Oregon 97140. Defendant further admits that Exhibit A to the Complaint contains what appears to be a legal description of real property. Except as expressly admitted, Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 of the Complaint and therefore denies them.

2. In answering paragraph 2 of the Complaint, Defendant admits the Bank of New York Co. merged with Mellon Financial Corp. in 2007 and is now known as the Bank of New York Mellon Corp., and that the Bank of New York Mellon is a wholly owned subsidiary of the Bank of New York Mellon Corp. Except as expressly admitted, Defendant denies the allegations in paragraph 2 of the Complaint and the whole thereof.

3. In answering paragraph 3 of the Complaint, Defendant admits that, as Trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates 2002-23XS and its successors and assigns, it filed a Complaint for Declaratory Relief and Judicial Foreclosure of a Deed of Trust in the Circuit Court of the State of Oregon for the County of Washington (“Washington County Circuit Court”) as Case No. C13-4715CV (“Foreclosure Action”), and that the Deed of Trust at issue in the Foreclosure Action pledged the property at 14300 SW McKinley Drive, Sherwood, Oregon 97140 as security for a Note signed by Gayle Reeves. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 regarding a divorce decree, and therefore denies them, but Defendant admits that the Note and Deed of Trust were in default prior to and at the time of filing of the Foreclosure Action. Except as expressly admitted, Defendant denies the allegations in paragraph 3 of the Complaint and the whole thereof.

4. In answering paragraph 4 of the Complaint, Defendant admits the docket for Washington County Circuit Court Case Number C086534CV reflects that the court entered judgments on March 10, 2010, April 16, 2010, June 9, 2011, and October 7, 2011, and that the

court docket identifies both Stanley C. Kennedy Enterprises, Inc. and Kennedy Restoration as the judgment creditor on some of those judgments and only Stanley C. Kennedy Enterprises, Inc. on others. Defendant further admits that the docket for Washington County Circuit Court Case Number C086534CV reflects that one or more of those judgments were assigned to Kennedy Note LLC. Defendant further admits that the docket on the Foreclosure Action does not reflect that Stanley C. Kennedy Enterprises, Inc. was named or served as a defendant in the Foreclosure Action. Except as expressly admitted, Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the Complaint and therefore denies them.

5. In answering paragraph 5 of the Complaint, Defendant admits that the docket for Washington County Circuit Court Case Number C086534CV reflects that one or more of the judgments in that case were assigned to Kennedy Note LLC. Except as expressly admitted, Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of the Complaint and therefore deny them.

6. In answering paragraph 6 of the Complaint, Defendant admits that the Washington County Circuit Court entered a final judgment and decree of foreclosure in its favor in Case Number C13-4715CV. The remainder of paragraph 6 characterizes plaintiff's allegations and states legal conclusions, to which no response is required. To the extent a response is required, and except as expressly admitted, Defendant denies the remaining allegations in paragraph 6 and the whole thereof.

7. Paragraph 7 of the Complaint characterizes plaintiff's allegations and states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 7 and the whole thereof.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 8 and the whole thereof.

9. Paragraph 9 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 9 and the whole thereof.

10. In answering paragraph 10 of the Complaint, Defendant admits that it is not in physical possession of the real property at 14300 SW McKinley Drive, Sherwood, Oregon 97140. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding plaintiff's physical possession of the real property and therefore denies them. Except as expressly admitted, Defendant denies the allegations in paragraph 10 and the whole thereof.

11. Paragraph 11 of the Complaint states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 11 and the whole thereof.

12. Paragraph 12 of the Complaint states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 12 and the whole thereof.

13. Paragraph 13 of the Complaint states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 13 and the whole thereof.

14. Except as expressly admitted herein, Defendant denies the allegations in the Complaint and the whole thereof.

DEFENSES

Without assuming any burdens that properly rest with plaintiff, Defendant asserts the following defenses:

15. The Complaint fails to state a claim upon which relief can be granted and Plaintiff cannot obtain any relief.

16. Plaintiff has suffered no injury, is not the real party in interest for the relief it

seeks, and lacks standing to bring this suit.

17. Plaintiff's claims are barred in whole or in part by the doctrines of claim preclusion and/or issue preclusion.

18. Plaintiff's allegedly assigned judgment was extinguished because the judgment debtor purchased it.

19. Plaintiff is an alter-ego of Jerry Reeves and because Jerry Reeves cannot assert any claims against Defendant, Plaintiff's claims fail.

20. Plaintiff is barred by equitable and legal doctrines, including estoppel, ratification, waiver, unclean hands, and laches.

21. The Complaint and each and every claim therein are barred because Plaintiff would be unjustly enriched if it were permitted to recover on the Complaint.

22. The interest of Defendant and its successors in interest in the property is superior to any right, title, or interest of Plaintiff and Plaintiff cannot void Defendant's interest or its successors' interest or the judgment in the Foreclosure Action.

23. Defendant or its successors are permitted to foreclose against Plaintiff, eliminating its interest.

24. Defendant reserves the right to assert additional defenses that become known through investigation and discovery.

WHEREFORE, Defendant prays as follows:

- A. That Judgment be entered in favor of Defendant on Plaintiff's Complaint;
- B. That Defendant be awarded fees and costs to the full extent permitted by law; and
- C. That the Court award Defendant such other relief as is just and proper under the

circumstances.

DATED this 20th day of December, 2019.

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